IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

FRIDAY, THE 8TH JUNE 2007 / 18TH JYAISHTA 1929

Crl.L.P..No. 316 of 2007()

CC.819/2001 of J.M.F.C.,VAIKOM

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PETITIONER/COMPLAINANT

KOUSALLYA THANKAPPAN, PERINGATHIL HOUSE,
PAMBAKKUDA P.O., ERNAKULAM DISTRICT.

BY ADV. SRI.K.REGHU KOTTAPPURAM

RESPONDENTS: ACCUSED & STATE

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1. C.B.KUMARI, THILAKAM, TEACHER,
KOTT. A.M.U.P.SCHOOL, TIRUR-1,
MALAPPURAM DISTRICT.

2. STATE OF KERALA REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,ERNAKULAM.

BY P.P.SRI.S.DILEEP FOR R2

THIS CRIMINAL LEAVE PETITION HAVING BEEN FINALLY HEARD ON 08/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K. Thankappan, J.

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Crl.L.P. No. 316 of 2007

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Dated this the 8th day of June, 2007

O R D E R

This is a petition to leave to appeal filed by the complainant in S.T.No.819/2001 on the file of the Judicial Magistrate of First Class, Vaikom. In the complaint it is stated that the 1st respondent borrowed an amount of Rs.50,000/- from the petitioner and in discharge of the above debt, she issued Ext.P1 cheque to the petitioner and when the cheque was presented for encashment, it was dishonoured for insufficiency of funds. After complying the statutory formalities, the complaint was filed. To prove the case against the 1st respondent the petitioner herself was examined as PW1 and Exts.P1 to P7 were marked. After closing the evidence on the side of the petitioner, the 1st respondent was questioned under section 313 Cr.P.C. She denied the allegation and stated that she had not received any amount from the appellant as alleged in the complaint. After considering the entire evidence, the trial court found that the 1st respondent was found not guilty of the offence punishable under section 138 of the Negotiable Instruments Act and hence she was acquitted under section 255(1) Cr.P.C. Aggrieved by the above finding, the petitioner has approached this Court.

2. The specific case set up by the appellant against the 1st respondent is that the 1st respondent came to the house of the appellant and borrowed an amount of Rs.50,000/- and in discharge of the said liability, the 1st respondent issued a cheque and when the cheque was presented for encashment, the same was dishonoured on the ground of insufficiency of fund. The trial court found that the petitioner failed to prove that the amount had been borrowed from her as alleged in the complaint. The case set up by the 1st respondent that there was no transaction between the petitioner and the 1st respondent and that the cheque in question was not issued in favour of the petitioner at all. It is also contended that the cheque in question was given to one Syamala who was working as a teacher along with her in a school at Tirur and the above cheque was misused by the petitioner who was a relative of Shyamala. The trial court believed the evidence adduced by the 1st respondent and found that Ext.P1 cheque was issued by the 1st respondent to Smt. Syamala and not to the petitioner and hence Ext.P1 cheque was issued not for the discharge of the legally enforceable debt owed by the 1st respondent.

2. Considering the entire facts and circumstances of the case, this Court is of the view that the impugned judgment requires any interference by this Court. Hence, leave to appeal is rejected.

K. Thankappan,
Judge.